

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nya Williams	Team: Team # 8	CCRB Case #: 200303219	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/02/2003 5:25 PM	Location of Incident: Land & Sea Resaurant	Precinct: 50	18 Mo. SOL 11/2/2004	EO SOL 11/2/2004	
Date/Time CV Reported Fri, 05/02/2003 9:03 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 05/02/2003 9:03 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Julio Delgado	02981	918927	050 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Larry Dunn	22049	930082	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Julio Delgado	Abuse: Sgt. Julio Delgado threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
B.SGT Julio Delgado	Abuse: Sgt. Julio Delgado frisked § 87(2)(b) [REDACTED]	[REDACTED]
C.SGT Julio Delgado	Abuse: Sgt. Julio Delgado threatened to notify Administration for Children's Services.	[REDACTED]
D.SGT Julio Delgado	Abuse: Sgt. Julio Delgado stopped and questioned § 87(2)(b) [REDACTED]	[REDACTED]
E.SGT Julio Delgado	Abuse: Sgt. Julio Delgado authorized the frisk and search of § 87(2)(b) [REDACTED]	[REDACTED]

Synopsis

§ 87(2)(b) alleged that when she went to a restaurant to retrieve a watch her boyfriend had lost, Sgt. Delgado frisked § 87(2)(b), § 87(2)(a) CVR 50-b, threatened to arrest her and have her children removed by the Bureau of Child Welfare. Later, when she returned to her apartment building with Sgt. Delgado and his partner, Sgt. Delgado allegedly stopped and questioned an acquaintance. § 87(2)(b), § 87(2)(a) CVR 50-b

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) called the CCRB complaint line on May 2, 2003, four hours after the incident. (encl 3a) She indicated that two officers had responded to the Land and Sea restaurant and asked everyone questions in response to “something someone did to the restaurant.” § 87(2)(b), § 87(2)(a) CVR 50-b

She is a § 87(2)(b) old Hispanic female who is 5’6” tall and weighs 140 pounds. § 87(2)(b). On May 20, 2003, she provided a telephonic overview of the incident (encl 4a) and on July 10, 2004 she provided a more detailed account in an in-person interview (encl 4b-4e).

§ 87(2)(g)

In her telephonic account she indicated that on May 2 her boyfriend called her to say there had been an incident at the Land and Sea Restaurant where he had lost his watch. In her in person interview she noted that her boyfriend had gone to pick their children up from school and she called him to find out their whereabouts. He told her about losing his \$10,000 watch in a restaurant and indicated he was about “to tear up the place.” § 87(2)(b) went to the restaurant where she learned that her boyfriend, § 87(2)(b), had broken a window after losing his watch. She offered to make restitution and in her in-person interview indicated she gave the manager her home number when two police officers arrived. The subject officer, PO1, was a Hispanic male in his 30’s who had four stripes on his uniform and a “bad” attitude. The witness officer, PO 2, was a black male who was about 6’ tall. PO1 repeatedly asked her for her address. In her in-person interview she indicated she told him she was from “Dyckman” but did not give a specific address. She also indicated she told the officers her nickname and said her boyfriend was named § 87(2)(b). When she refused to provide it, he threatened to take her to the precinct to be fingerprinted (Allegation A). § 87(2)(b), § 87(2)(a) CVR 50-b

When he realized that she was pregnant, he commented that she could have the Bureau of Child Welfare take the baby away for lying and obstruction of justice (Allegations B & C). She was driven, without handcuffs, to her apartment although she did not know how they obtained her address. Outside her building was a § 87(2)(b) old neighbor, § 87(2)(b). After she spoke to § 87(2)(b) the officers forced the girl to enter the building with them. § 87(2)(b) refused to get on the elevator so PO1 said they would take the stairs but § 87(2)(b) entered the elevator. After § 87(2)(b) spoke to a male who was with his girlfriend, the officers stopped him and asked if he were § 87(2)(b) (Allegation D) Although she could provide no details, she indicated that the officers frisked § 87(2)(b) (Allegation E) but § 87(2)(b) did not show identification. § 87(2)(b) and the officers then got on the elevator on the third floor and took it to her § 87(2)(b) floor apartment where they left her at the door without further questioning.

Results of Investigation

Civilian Statements

§ 87(2)(b), and § 87(2)(b) were contacted at the Land and Sea Restaurant, 5535 Broadway, on July 8, 2003. Neither consented to an interview at the time. § 87(2)(b) indicated he had followed § 87(2)(b)'s boyfriend from the restaurant and had seen him meet up with § 87(2)(b). § 87(2)(b) then came to the restaurant and began loudly demanding the watch. She was rowdy and threatened to damage the restaurant. § 87(2)(b), § 87(2)(a) CVR 50-b
§ 87(2)(b) was again contacted on June 9, 2004. (encl 13c) He stated that when § 87(2)(b) arrived at the restaurant, she was screaming and threatening to burn the restaurant. She gave the manager her phone number but told him the cell phone she was holding had been broken by her boyfriend. Two officers came and attempted to calm § 87(2)(b) down. The white officer was in charge and advised her that if she did not cooperate, they would have to take her to the precinct. She did calm down. § 87(2)(b) did not see either officer touch or frisk her. She ultimately left with the officers to look for the boyfriend. The officers returned about 20 minutes later and indicated they had not located the boyfriend.

§ 87(2)(b) was interviewed on July 10, 2003. (encl 5a-5c) He indicated that he was between the second and third floors of the back stairwell when § 87(2)(b) who was accompanied by 2 officers asked him if he had seen § 87(2)(b)'s male friend, whose name he could not remember. § 87(2)(g) first stating the black officer stopped him and asked for identification and then later saying it was the white officer who stopped him. He indicated both officers frisked and searched in his pockets. He indicated that his girlfriend, who resides in the building, had preceded him down the stairs and was on the first floor when the stop occurred. He also indicated that the officers repeatedly asked him if he were § 87(2)(b)

§ 87(2)(b) who was § 87(2)(b) old at the time of the incident, was telephonically interviewed on July 10, 2003 and May 21, 2004. (encl 6a-6c) The first conversation was not properly recorded and a contemporaneous summary of the conversation was not drafted. However, a review of the tape that records the investigator's responses and follow-up questions indicate that § 87(2)(b) told the investigator that she was outside when § 87(2)(b) exited from the police vehicle. § 87(2)(b) told § 87(2)(b) to go upstairs to warn her boyfriend that the police were there. § 87(2)(b) did not believe the police heard what § 87(2)(b) said to her. However, she knew the boyfriend was not upstairs because she had just seen him hiding in the stairwell. The officers directed § 87(2)(b) to come with them into the lobby. She was not forced but went willingly. § 87(2)(b) called the investigator back to say she had forgotten to relate that while they were waiting for the elevator, the white officer touched § 87(2)(b) inappropriately. During the conversation(s) on July 10, § 87(2)(b) the mother of § 87(2)(b) also spoke to the investigator and indicated that § 87(2)(b) had told her she was going to sue the police department. § 87(2)(b), § 87(2)(a) CVR 50-b
§ 87(2)(b)

§ 87(2)(b) and her mother § 87(2)(b) were contacted by the Team Manager, Dianne Weisheit, again on May 21, 2004. § 87(2)(b) related that she had just come downstairs from § 87(2)(b)'s apartment when the officers and § 87(2)(b) arrived. § 87(2)(b), § 87(2)(a) CVR 50-b She did not hear what § 87(2)(b) said. She and § 87(2)(b) did not speak to each other but the officers asked her if she had just come from § 87(2)(b)'s apartment. When she replied that she had, the white officer told her to come into the building and get on the elevator with them. Once inside, they all took the elevator to the § 87(2)(b) and went into § 87(2)(b)'s apartment. § 87(2)(b) was in the children's bedroom playing with her daughter while § 87(2)(b) and the officers were in § 87(2)(b)'s bedroom. The only part of the conversation § 87(2)(b) heard was when an officer threatened to take her children away. § 87(2)(b) stayed in the apartment for 20 minutes and then left. The officers were still there.

Once again § 87(2)(b) provided some background information. (encl 13g) She indicated § 87(2)(b) is a crackhead whose boyfriend had recently been arrested for stabbing someone who was smoking crack with § 87(2)(b) (When § 87(2)(b) called § 87(2)(b) a "crackhead," § 87(2)(b) could be heard in the background screaming that she wasn't.) At some point, § 87(2)(b) had approached § 87(2)(b) § 87(2)(b) § 87(2)(a) CVR 50-b Because § 87(2)(b)'s daughter had witnessed

it, some people would call § 87(2)(b) about it and § 87(2)(b)'s family would receive some of the money from the suit. § 87(2)(b) stated she did not want to be involved with § 87(2)(b)

§ 87(2)(b) was located during a field canvass on July 10, 2003. He refused to provide a statement to investigators. (encl 13c)

According to the Communications records (encl 10a-10d), the following transpired:

1725: § 87(2)(b) called 911 to report that a male had entered the Land and Sea Restaurant at 5535 Broadway to wash his hands and lost his watch and was having a fit. He was wearing a brown jacket, white shirt and brown pants. It was unknown if he had a weapon and no injuries were reported.

1730: A female caller indicated the manager was fighting a black male who was wearing a beige velour jogging suit and white shirt. He was 5'9" tall and broke a window.

1730: Another female caller indicated a male broke glass at the Land and Sea Restaurant but had left.

1731: Female caller stated the male, who broke window at the Land & Sea, was running under train tracks towards the 207 St bridge. Male black, wearing beige velour jogging suit running towards the developments.

1739: Reassigned, advise Sgt. Hidalgo

1740: Unit 50E resumed patrol

1741: Sergeant at location, see nothing

1742: Advised sergeant of description

1742: § 87(2)(b) stated perp broke door

1748: Advise Sgt. that complainant had perp's girlfriend

1755: Sgt enroute

Officer Interviews

Sgt. Julio Delgado made the following entries in his memo book concerning the incident:

1717: 10-39 (*Crime in Progress*) 5535 B'way

1720: 10-84 (*Arrived at Scene*) 5535 B'way

Suspect M/B Gold sweatshirt

S/B on B'way

1725: Canvass S/B B'way

Suspect scene (sic) running into § 87(2)(b). Foot pursuit negative. Canvass w/girlfriend to § 87(2)(b)

§ 87(2)(b) negative

1800: Negative results canvass

§ 87(2)(b)

1801: 10-98 (*Resuming Patrol*) to § 87(2)(b)

1920: 93C (*Prepare Complaint report*) 90Z (*Gone on arrival*) on canvass

1930: 10-84 SH (*Stationhouse*)

Sgt. Julio Delgado is a Hispanic male with brown hair and eyes; he is 5'11" tall and weighs 195 pounds. He was interviewed at CCRB on October 14, 2003 and provided the following account (encl 9a-9f):

In response to a 911 call from the Land and Sea restaurant, he and PO Dunn were the first to arrive. He observed that one of the restaurant windows was cracked and the door had a hole in it. After bystanders and staff provided them with the description of the suspect, the officers conducted a canvass. They saw a man wearing gold sweatpants and a jacket flee into the lobby of § 87(2)(b). They pursued him on foot into the building. They ran up a few flights of stairs but could not find him. While they were driving back to the restaurant, they received another 911 call about a woman creating a disturbance. There, they found the manager and a pregnant woman yelling at each other. She told the sergeant that she did not know the details of the incident but her boyfriend had called asking her to get his watch. She did not provide her real name and said she was from "Dyckman," a project in Manhattan. She had a bulge in one of her

pockets and the sergeant asked her numerous times what it was. When she did not respond, he felt it. She immediately pulled back and said he could not search her because he was a male. The sergeant told her that he had the right to frisk her because of the threats she had made and her behavior, that he could request a female officer to the scene but it would be better for her to produce whatever was in her pocket. She then removed a cellphone. Sgt. Delgado denied continuing the frisk § 87(2)(b), § 87(2)(a) CVR 50-b
§ 87(2)(b) He denied making a comment about having her child taken away from her.

§ 87(2)(b) ultimately provided her home address but never provided her boyfriend's name or admitted he resided with her. However, the officer offered her a ride home because he wanted to establish the address of the suspect and of § 87(2)(b) because she too had made threats. Once at the address, § 87(2)(b) stalled: She used the intercom because she said she did not have her key although Sgt. Delgado had previously entered the lobby through the unlocked door. She refused to get into one elevator although she directed two little girls, whom she had spoke to outside, to get on. She spoke to a number of people in the lobby; Sgt. Delgado did not recall stopping, questioning or frisking any individuals § 87(2)(b) spoke to. They ultimately took an elevator to the § 87(2)(b) floor although he did not recall if they got on the elevator on the first or third floor. When they arrived on the § 87(2)(b), they saw the two little girls talking to children inside § 87(2)(b)'s apartment. The officer asked the children inside the apartment if anyone else was home. The children indicated they were home alone. Sgt. Delgado advised § 87(2)(b) that leaving children alone unsupervised constituted neglect and then left. In the hallway, he questioned people who confirmed that § 87(2)(b)'s boyfriend resided on the § 87(2)(b) and that he was watching the officers from a nearby building. § 87(2)(b)'s boyfriend was arrested on a later date for stabbing another person. He indicated that he saw her again on July 2

PO Larry Dunn had the following entries in his memo book:

1717: 10-39 (*Crime in Progress*) 5535 Broadway
1720: 84 (*Arrived at Scene*) 5535 M/Black gold Sweats ran towards 230 Broadway
1725: Conducted canvass of south Broadway. Suspect was scene (sic) running into § 87(2)(b) A canvass was conducted with suspect's girlfriend on the § 87(2)(b) of housing authority. Neg results
1800: Neg results of canvass. Drove back to 5535 Bway to talk to complainant. CC states that suspect made threats that no one was safe in restaurant.
1830: Fill out 61 (*complaint*). Inview C/V to get facts on suspect
1920: 93 C (Complaint) for job. Open 61 for suspect.
1930: 84 at Station House

PO Dunn also prepared a Complaint Report #§ 87(2)(b) (encl 7a-7c) which indicates that an unidentified black male became verbally violent and broke a window after loosing his watch at the Land & Sea Restaurant. He fled on foot and was observed fleeing onto § 87(2)(b) The canvass results were negative. His girlfriend then appeared at the restaurant to retrieve the watch. Residents of § 87(2)(b) indicated the suspect resides on the § 87(2)(b)

PO Larry Dunn, a black male who is 6'2" tall and weighs 235 pounds, was interviewed on September 30, 2003 (encl8a-8f). His statement was consistent with Sgt. Delgado's about their responding to the restaurant and then leaving to conduct a canvass with negative results. When they returned to the restaurant, § 87(2)(b) was yelling and screaming and the restaurant manager wanted her removed. He then went to a booth to complete the complaint report and left § 87(2)(b) and Sgt. Delgado at the entrance. He never heard Sgt. Delgado threaten to take § 87(2)(b) to the precinct nor did he see the sergeant frisk her. When he completed the paperwork, either he or Sgt. Delgado offered her a ride home. Before they got into the car, he asked if she had any weapons but he did not frisk her. She provided her home address and as they were driving they saw her boyfriend enter her building. They left § 87(2)(b) standing by the patrol car while they entered the building in the front and exited from the back. They returned to their car where § 87(2)(b) indicated he might have gone to her apartment. They did not speak to anyone when they entered the building and took the elevator. He denied escorting a young girl into the building or frisking a man. When they arrived at § 87(2)(b)'s apartment, they peered inside but did not enter. They saw some children in the apartment.

Other Records

There were no stop and frisk records pertaining to either § 87(2)(b) nor § 87(2)(b) (encl 11a-11b).

Record of Lawsuit

On June 15, 2004 Bruce Gomez of the Corporation Counsel advised there was no record of § 87(2)(b) s having filed a civil suit against the city.

Conviction History of Complainant

There is no record of § 87(2)(b) s or § 87(2)(b) s being convicted in New York State.

CCRB History of Officers

Sgt. Delgado has never had a substantiated CCRB allegation.

Conclusions and Recommendations

Undisputed Facts

§ 87(2)(b) was at the Land & Sea Restaurant when Sgt. Delgado and PO Dunn arrived to investigate the complaint of damaged property. The officers were aware of § 87(2)(b)'s relationship to the suspect who had broken the window but she did not originally cooperate in providing them with information. Sgt. Delgado advised her that if she did not cooperate she would be taken to the precinct. He also frisked her. The officers subsequently escorted § 87(2)(b) to her apartment building and up to her apartment to look for her boyfriend.

What is in his dispute is the extent of the frisk and whether Sgt. Delgado threatened to have § 87(2)(b)'s child(ren) removed. In addition, it is disputed whether the officer stopped, questioned and frisked an acquaintance, § 87(2)(b).

Credibility

§ 87(2)(g), § 87(2)(b), § 87(2)(a)

§ 87(2)(g)

§ 87(2)(g)

Officer Identification

Sergeant Delgado was identified by the civilians' assertions that it was the white and/or higher ranking officer and by his own acknowledgement. § 87(2)(g)

Allegation A: Sgt. Delgado threatened to arrest § 87(2)(b)

All witnesses agree that § 87(2)(b) was disruptive and uncooperative both before and after the officers arrived. Sgt. Delgado acknowledged that he told § 87(2)(b) they would bring her to the precinct if she did not calm down. § 87(2)(g)

Allegation B: Sgt. Delgado frisked § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) from the moment the officer conducted the frisk, complained about a male officer's "searching" her. § 87(2)(b), § 87(2)(a) CVR 50-b

However, Sgt. Delgado asserted that he received a radio communication that the girlfriend of the suspect was at the restaurant and making threats. Although the SPRINT print-out does not indicate any threatening behavior, § 87(2)(b) confirmed that she had made threats. Because of her behavior, her failure to initially cooperate in the investigation and the observation of a bulge in her pocket, Sgt. Delgado stated he made a limited frisk of her person. When she objected, he told her why he had the authority. § 87(2)(g)

Sgt. Delgado indicated that § 87(2)(b) then retrieved a broken cell-phone from her pocket, which § 87(2)(b) confirmed she was carrying. Per Kamins, courts have upheld frisks in cases where police are "justified in making an inquiry of a suspect and upon approaching the suspect observed a bulge on the suspect's person." (encl 1a-1c) § 87(2)(g)

Allegation C: Sgt. Delgado threatened to notify the Administration of Children's Services (formerly Bureau of Child Welfare).

§ 87(2)(b) alleged that when Sgt. Delgado threatened to arrest her, he told her he could notify the Bureau of Child Welfare so her child could be removed. § 87(2)(g)

Allegation D: Sgt. Delgado stopped and questioned § 87(2)(b)

Allegation E: Sgt. Delgado frisked § 87(2)(b)

§ 87(2)(g)

Notes

§ 87(2)(g)

Investigator Williams conducted the investigation; Manager Weisheit prepared the closing report.

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: